Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992	)	CS Docket No. 98-82
	)	
Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996	)	CS Docket No. 96-85
	)	
The Commission's Horizontal and Vertical Ownership and Attribution Rules	)	MM Docket No. 92-264
	)	
Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests	)	MM Docket No. 94-150
	)	
Review of the Commission's Regulations and Policies Affecting Investment In the Broadcast Industry	)	MM Docket No. 92-51
	)	
Reexamination of the Commission's Cross-Interest Policy	)	MM Docket No. 87-154

COMMENTS OF CABLEVISION SYSTEMS CORPORATION

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COMMENTS OF CABLEVISION SYSTEMS CORPORATION

Cablevision Systems Corporation ("Cablevision"), by its attorneys, submits these comments in response to the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding.[1/] Through various subsidiaries and affiliates, Cablevision provides cable television service, telephony and other product and service offerings to subscribers and customers located principally in New York, New Jersey and Connecticut. Cablevision's affiliate Rainbow Media Holdings, Inc. ("Rainbow") provides a wide array of regional and national cable programming services, including American Movie Classics, Bravo, Women's Entertainment, Independent Film Channel, MSG Network, Fox SportsNet (in partnership with Fox), News 12, and Metro.

INTRODUCTION AND SUMMARY

This proceeding arises in response to the D.C. Circuit Court of Appeals decision invalidating the horizontal ownership and channel occupancy rules -- as well as certain associated attribution criteria -- adopted by the Commission pursuant to Section 613(f) of the Communications Act.[2/] The thrust of the court's decision was that the rules promulgated by the Commission in 1998 failed to adequately account for both the "substantial changes in the cable industry" that have occurred since enactment of Section 613(d) in 1992 and the "true relevance of competition."[3/] The *Notice* issued in response to the remand from the D.C. Circuit represents a thoughtful effort both to reconcile the D.C. Circuit's directives on remand with the Commission's statutory responsibilities under Section 613(f), and to gauge the necessity for structural regulation of cable operators that compete in a multichannel video programming marketplace that is far more competitive and dynamic than it was nearly a decade ago.

While the Commission's task in this proceeding is admittedly complex, the principles that should guide its decision-making are straightforward: market forces should be allowed to work in the cable industry free of unnecessary government intervention, and regulatory constraints should be imposed only to remedy identifiable

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[1/] *Further Notice of Proposed Rulemaking*, FCC 01-263 (rel. Sept. 21, 2001) ("*Notice*").

[2/] *See Time Warner Entertainment v. Federal Communications Commission et al.*, 240 F.3d 1126, 1133-34 (D.C. Cir. 2001).

[3/] *Id.*, 240 F.3d at 1134.

market failures. These principles are consistent with the Constitutional parameters on the Commission's authority set forth in *Time Warner*, the Congressional policy to "rely upon the marketplace, to the maximum extent feasible" when considering Federal regulation of cable operators,[4/] and the Commission's own oft-stated regulatory philosophy.[5/] Consistent with these principles, Cablevision respectfully requests the Commission to take the following steps in this proceeding.

First, the Commission should eliminate any limitations on carriage of affiliated programming by cable operators. The channel occupancy rules -- which limit carriage of affiliated programming services to 40% of a cable system's activated channel capacity -- were conceived in an era when cable systems with 36 or fewer channel were commonplace, vertically-integrated programming networks constituted more than half of all cable programming services, and cable operators faced little competition from alternative multichannel video programming distributors ("MVPDs"). Today, more than two-thirds of all cable subscribers are served by systems with more than 54 channels and vertically-integrated programming networks now account for only about one-quarter of all cable networks in the country. Cable operators face vigorous competition from DBS and other MVPDs, thereby aggravating the risks and penalties associated with making program carriage decisions based upon affiliation rather than customer preference. Marketplace developments have fully obviated the need for vertical limits.

At a minimum, if the Commission decides to retain the vertical limit rules in some form, it should leave in place the current 75-channel cap on the number of channels

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4/ Cable Television Consumer Protection and Competition Act of 1992, § 2(b)(2).

covered by the restriction. The Commission has acknowledged that the need for the channel occupancy rules wanes as system channel capacity increases, and adopted the 75-channel cap in part so that the rules would not thwart the introduction of digital, interactive, and "niche" programming by operators of large-capacity systems. In fact, Cablevision has devoted some of the capacity on its upgraded systems to furnishing the type of advanced services envisioned by the Commission when it adopted the numerical cap on its channel occupancy rules, such as the company's new "Mag Rack" service, which offers on-demand video magazines covering a diverse range of subscriber interests and hobbies. If any sort of channel occupancy rules are retained by the Commission, the 75-channel cap on the application of those rules also should remain in place.

Second, consistent with the mandate of the *Time* Warner case, the Commission should revise its attribution rules so that they are tailored more closely to addressing the objectives underlying the horizontal ownership rules. Non-controlling, minority ownership interests that preclude holders from wielding influence or control over program purchasing decisions are irrelevant to the concern that cable operators might unduly restrict competition and diversity in the programming marketplace, and should therefore not be treated as attributable. The current attribution rules, which mechanically apply quantitative criteria to equity holders with little regard to the rights actually conferred to those holders, can thwart pro-competitive transactions that do not threaten the goals of the horizontal restrictions.

5/ *See* Remarks of Michael K. Powell, Chairman, Federal Communications Commission at the National Summit on Broadband Deployment, Washington, D.C. (Oct. 25, 2001) (regulation is appropriate only in the case of "clear market failures").

The Commission should adopt a new rule that treats as non-attributable minority interests in cable companies that preclude holders from exercising "significant influence" or "control" over program purchasing decisions. By adopting such a rule in the context of horizontal ownership of cable systems, the Commission can continue to uphold the principles underlying the horizontal limit rules, while providing industry participants more freedom to enter into and structure transactions efficiently and optimally without fear of becoming needlessly entangled by the Commission's ownership restrictions.

Third, the Commission should refrain from adopting any prophylactic limitations on cable/DBS ownership. There is no evidence that such combinations pose an inherent competitive threat that requires a blanket prohibition. To the contrary, a structural limit on cable/DBS cross-ownership could impede business arrangements that enhance multichannel competition. In fact, Cablevision is entering the DBS marketplace in order to do just that. Any competitive issues associated with ownership of DBS facilities and assets by cable operators should be dealt with on a case-by-case basis.

I. THE COMMISSION SHOULD DECLINE TO ADOPT ANY CHANNEL OCCUPANCY RULES

Under the D.C. Circuit's decision in *Time Warner*, Federal limits on the number of affiliated programming channels carried on cable systems can be justified only if the limitations imposed do not burden substantially more speech than is necessary to serve the government's interest in promoting competition and diversity.[6/] In particular, the D.C. Circuit cautioned that any horizontal or vertical limit adopted by the Commission

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6/ *Time Warner*, 240 F.3d at 1130.

must address harms that "are real, not merely conjectural."[7/] Given the vigorously competitive conditions of today's MVPD marketplace, no channel occupancy limit can survive constitutional scrutiny, since no such limit is necessary to advance the objectives of competition and diversity. Whatever need may have existed for the channel occupancy limits when the Commission's rules were first adopted in 1993 has now been eradicated by technological advances and the onset of competition.

When the original 40 percent limit on carriage of affiliated programming was adopted, the Commission itself recognized that changed circumstances might diminish or reduce the need for channel occupancy restrictions.[8/] Under the Commission's original rules, the 40 percent limit on cable system carriage of affiliated programming applied only to the first 75 channels carried on a system; each additional channel above 75 was not subject to the vertical limit.[9/]

In fashioning the 75-channel cap, the Commission noted that a conventional 550 MHz system could offer approximately 75 video channels, and that occupancy limits should be relaxed "once the number of cable channels on a system increases beyond the number distributed using traditional technology."[10/] The Commission reasoned that the need for occupancy limits for higher-capacity systems utilizing additional channel capacity for multiplexed networks, digital services and video-on-demand offerings "do[es] not parallel the occupancy limits for more restricted capacity systems where most

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7/ *Id.*

8/ *See In the Matter of Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal and Vertical Ownership Limits*, Second Report and Order, 8 FCC Rcd 8565, 8567 ¶¶ 83-84, 89 (1993) ("*Second Report and Order*").

9/ *Id.* ¶¶ 4, 68.

10/ *Id.* ¶ 84.

services are distributed on discrete channels to a significant portion of a system's subscribership."[11/] Indeed, the Commission specifically noted that larger cable systems with expanded channel capacity would "likely be inclined to deliver targeted 'niche' video programming services aimed at correspondingly smaller audience sizes"[12/] -- which is precisely what Cablevision is doing with its new Mag Rack digital offering.[13/] Thus, the Commission already has recognized that technological advances could reduce or eliminate the need for channel occupancy restrictions.[14/]

In the *Time Warner* decision, the D.C. Circuit endorsed the view that competitive developments could "preclude[] cable operators from exercising the market power which originally justified channel occupancy limits."[15/] As the court observed, competition significantly affects a cable company's incentive and ability to favor affiliated programming, since the use of any program carriage criteria other than viewer preference risks driving subscribers into the arms of the cable operator's rivals.[16/]

This is, of course, precisely the dynamic at work in today's MVPD marketplace. In contrast to the market conditions prevailing in 1993 when the Commission's channel

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[11/] *Id.* ¶¶ 83-84.

[12/] *Id.* ¶ 83.

[13/] Mag Rack offers on-demand video magazines on a range of topics -- such as wine, birding, motorcycles, health, science, photography and a variety of other subjects -- focused on the hobbies, lifestyles and special interests of Cablevision viewers.

[14/] *See also In the Matter of Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992, Vertical Ownership Limits, Memorandum Opinion and Order on Reconsideration of the Second Report and Order*, 10 FCC Rcd 7364, ¶ 34 (1995) (the "vast expansion of channel capacity may obviate the need for a rigid occupancy limit").

[15/] *Time Warner*, 240 F.3d at 1138, *citing In the Matter of Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal and Vertical Ownership Limits,* Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 6828, 6862 (1993) *("First Report and Order").*

[16/] *Id.* at 1139 ("competition raises the stakes for a firm that sacrifices the optimal price-quality trade-off in its acquisition of programming").

occupancy limits were adopted, cable operators face competitive discipline in every local market due to the national availability of DBS.[17/] The competitive constraints imposed by DBS are present in all local markets, regardless of the particular penetration rates achieved by alternative MVPDs.[18/]

Given the ubiquitous presence of DBS providers and the continued rise in their rate of new customer acquisition, no cable operator can afford the risks and penalties attendant to denigrating the overall quality of its service by carrying an affiliated programming network which would not otherwise gain distribution on its own merits.[19/] Since DBS imposes competitive discipline in all cable markets, there is no basis for imposing channel occupancy limits in any market, regardless of whether a particular local market does or does not satisfy the "effective competition" test for purposes of rate deregulation.[20/]

The 1992 Cable Act's statutory directive to the Commission to adopt channel occupancy rules arose from the fact that most cable operators faced little competition from alternative MVPDs, many cable operators owned systems with limited channel capacity, and vertically integrated cable networks constituted a majority of the cable

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17/ *Cf. Notice* ¶ 77 ("the competitive MVPD marketplace has evolved since the time the vertical limits were adopted, both locally and nationally, particularly as a result of DBS").

18/ *Cf. id.* ¶ 65 n.148 ("When entities compete in the downstream market, i.e., for MVPD subscribers, they have an incentive to try to offer the highest quality programming possible. If they do not (*e.g,*, if they choose programming based on affiliation rather than consumer demand), some of their subscribers may switch to competing MVPDs and, as a result, their revenues would fall").

19/ *See Time Warner*, 240 F.3d at 1138 (agreeing that "exposure to competition will have an impact on a cable company's *ability* to indulge in favoritism for in-house productions" since "reliance on in-house suppliers offering an inferior price-quality trade-off . . . may threaten a competitive firm's very survival").

20/ *Cf. Notice* ¶ 83.

programming networks available for distribution.[21/] None of these conditions are prevalent today.

As noted above, all cable operators face competitive discipline from DBS. Further, channel capacity has expanded significantly in the last decade. In 1990, only 24% of cable subscribers were served by cable systems offering 54 or more channels. Today, nearly 69% of cable subscribers obtain service from cable systems with more than 54 channels, and another 20 million DBS subscribers have access to hundreds of channels.[22/] Likewise, the number of vertically integrated networks, as a percentage of all cable networks, has been cut by more than half since 1992. Vertically integrated cable networks constituted 53% of all cable programming services in 1992; today they account for only 26% of all such services.[23/] Thus, unaffiliated programmers are competing with a steadily falling percentage of vertically-integrated networks for a steadily rising number of distribution outlets.

Further, the proliferation of non-vertically integrated networks, the emergence of the broadcast networks as a significant competitive force in the cable programming marketplace, and the strength and durability of competition from alternative MVPDs – particularly DBS – precludes cable operators from using vertical integration with

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21/ 1992 Cable Act § 2(a)(2), (4), (5); S. Rep. No. 92, 102d Cong., 1st Sess. 23-29 (1991).

22/ 1994 Video Competition Report, Appendix C, Table 3; 2001 Video Competition Report, Table B-4.

23/ *See In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act, Sunset of Exclusive Contract Prohibition*, CS Docket No. 01-290, Comments of the National Cable & Telecommunications Association at 2, 11-12 (filed Dec. 3, 2001); *First Video Competition Report* ¶ 161.

programmers to thwart competition from rival MVPDs and programmers.[24/] Cable operators do not have monopsony power in the programming marketplace, and rival MVPDs have access to a broad store of non-vertically integrated programming, as well as the ability and strength to enter into programming investments themselves.[25/] Indeed, the recent transaction involving EchoStar, Vivendi and USA Networks highlights the dynamism of the programming marketplace, and further evidences the inability of cable operators to foreclose rival MVPDs and programmers.[26/]

The directive in Section 613(f) to "prescribe rules and regulations establishing limits on the number of channels on a cable system that can be occupied" by affiliated programming does not obligate the establishment of channel occupancy limits if the Commission determines that marketplace conditions obviate the need for such rules.[27/] Indeed, the *Time Warner* case holds that only channel occupancy limits that are <u>necessary</u> to ensure programming diversity and competition could withstand constitutional

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[24/] *See generally* Economists Incorporated, "Competition for Video Programming: Economic Effects of Exclusive Distribution Contracts," (Dec. 3, 2001), (attached as Exhibit A to Comments of Cablevision Systems Corporation, CS Docket No. 01-290 (filed Dec. 3, 2001)) at 15-23; *id*. at 20-21 (noting that to maintain "foreclosure over time would require the cable operator to control the inputs used in the production of programming" and explicating the inability of operators to wield such control); *id.* at 22 ("cable today simply does not have the economic clout, even if it were monolithic, to engage in profitable foreclosure of programming to competing media").

[25/] *See id. Cf. Notice* ¶ 81 ("In order for vertical integration to have detrimental effects, two conditions must be satisfied. First, the vertically integrated MSO must have national monopsony power so that it could 'significantly and profitably disadvantage a rival to its controlled downstream systems.' Second, the vertical integration must afford the MSO the means to implement such behavior (*i.e.*, but for vertical integration, the MSO would not be able to foreclose and disadvantage rival programmers)").

[26/] *See*, *e.g.*, "Why Vivendi Did the Dish," <www.time.com/time/business/article/ 0,8599,188843,00> (the Vivendi-USA-EchoStar deal will create a "vertically integrated media behemoth" to compete with cable operators).

[27/] 47 U.S.C. § 533(f)(2); *see Notice* ¶ 83 ("we seek comment as to whether a decision to eliminate the vertical limit could be reconciled with the Commission's statutory mandate set forth in Section 613(f)(1)(B)").

scrutiny.[28/] Likewise, the Congressional policy to rely on the marketplace "to the maximum extent feasible"[29/] is applicable to any rulemaking and policy proceeding under the 1992 Cable Act, and provides further support for any decision by the Commission to forebear from imposing regulations which are unnecessary due to competitive developments. Indeed, Section 613 itself directs the Commission, in setting rules under that provision, to "take particular account of the market structure" of the cable industry, and ensure that its rules "reflect the dynamic nature of the communications market."[30/] In short, the Commission is under no legal obligation to adopt channel occupancy rules if it concludes that they are no longer necessary to protect diversity and competition.

At a minimum, if the Commission does decide to impose some form of channel occupancy rules, it should retain the cap on the number of channels covered by the restriction. The Commission's decision to impose a cap on the number of channels subject to the vertical limit rules not only reflected the reduced need for those limits on large-capacity systems, but also was designed to prevent its rules from impeding the emergence of new video services that took advantage of advanced technology. As the Commission anticipated, cable operators have utilized their expanded channel capacity from upgraded systems to offer new types of video services, thereby validating the Commission's decision to place a cap on the application of its vertical limit rules. If the

[28/] *Time Warner*, 240 F.3d at 1130-35. Similarly, the record must demonstrate the evident necessity for any channel occupany rules adopted in this proceeding in order for such rules to withstand scrutiny under the Administrative Procedure Act. *See*, *e.g.*, *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 37 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 829 (1977), *quoting City of Chicago v. FPC*, 458 F.2d 731, 742 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 1074 (1972) ("a 'regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist'").

[29/] Cable Television Consumer Protection and Competition Act of 1992, § 2(b)(2).

[30/] 47 U.S.C. § 533(f)(2)(C), (E).

Commission does not eliminate its vertical limit rules, it should leave the 75-channel cap in place.

II. THE COMMISSION SHOULD RELAX ITS CABLE ATTRIBUTION RULES SO THAT MINORITY INTERESTS THAT DO NOT CONVEY SIGNIFICANT INFLUENCE OR CONTROL OVER PROGRAMMING DECISIONS ARE NOT DEEMED ATTRIBUTABLE FOR PURPOSES OF THE HORIZONTAL OWNERSHIP RULES

Consistent with both the mandate of *Time Warner* and the Commission's own oft-stated goal to tailor its rules to fit its articulated policy objectives, the Commission should refine its cable television attribution rules so that only interests that provide the holder with an opportunity to wield significant influence or control over programming decisions are deemed attributable for purposes of applying the cable attribution rules. Mechanical attribution criteria that sweep within their reach interests that do not permit the holders to exercise control or significant influence over programming decisions can discourage pro-competitive transactions that can facilitate the ability of cable operators to upgrade their networks and deploy new services.

For a variety of reasons, one cable company may opt to take an equity interest in another cable company without necessarily opting to obtain the ability to influence programming decisions. Cable operators might invest in one another in order to spread the risks of network upgrade and other capital-intensive projects, or to facilitate the introduction and deployment of new, non-video services such as cable Internet service and IP telephony. Such transactions spur competition and benefit consumers by expediting the deployment of advanced capabilities and new services. Overbroad attribution criteria, however, can impede or prevent such transactions, by attributing to a cable company the subscribers of another cable operator in which that company has made a strategic investment – even if the nature of the interest precludes the investor from exercising influence or control.[31/]

The Commission previously has noted that its attribution criteria should further the objectives underlying the horizontal ownership rules, "which relate principally to the ability of cable operators to unduly influence the programming marketplace."[32/] It follows that interests in cable companies that preclude the holder from exercising influence over programming decisions do not implicate the objectives addressed by the horizontal ownership rules, and should therefore not be deemed attributable. The Commission has, in fact, exempted from attribution limited partnership interests in cable companies that meet certain insulation criteria which preclude the partnership holders from influencing programming or management decisions.[33/]

But it is not only partnership interests that can be structured to insulate holders from exercising significant influence or control over programming. Even equity and

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31/ For example, Cablevision has approximately 3 million cable subscribers and is therefore in little danger of approaching or exceeding any horizontal ownership cap that might be adopted by the Commission. If, however, another cable company with a subscriber count at or near the horizontal cap sought to take a 5 percent or more interest in Cablevision in order to facilitate the joint roll-out of IP telephony and other advanced services by the two companies, the transaction could be derailed by the Commission's attribution rules. The Commission's current rules would attribute all of Cablevision's subscribers to the company taking a minority stake, even if the holder was precluded from exercising control or influence over programming decisions. Even if the transaction could be completed because it resulted only in the acquirer hitting -- but not exceeding -- the horizontal ownership limit, the combined effect of the ownership and attribution rules is to effectively preclude further expansion by either the acquirer or Cablevision. In this example, the constraining impact on Cablevision is particularly problematic, since, by itself, the company was in no danger of exceeding the cap, but is now limited from any further expansion due to its decision to enter into a strategic relationship with a larger cable company.

32/ *First Report and Order* ¶ 157.

33/ *See* 47 C.F.R. § 76.501, Note 2(f).

voting stock interests that exceed the current 5% attribution threshold can be shaped to preclude the holder from influencing programming decisions. For example, many companies have multiple classes of stock, which may provide equity holders with voting power that is different from the financial interest conveyed by their equity holding. Further, an equity holder with more than 5% of a company's voting stock might be required via side agreements to vote its shares on major management decisions in proportion to the votes cast by all other shareholders. Similarly, that holder also might be barred from joining voting groups or voting trusts, further precluding his or her ability to exercise independent voting power. In addition, the aggregate interests of other major -- albeit not majority shareholders -- may be so large and closely intertwined as to prevent a minority shareholder from wielding influence or control.[34/]

Attribution rules for the cable industry should reflect the goal of the horizontal ownership limit: to prevent cable operators from impeding the development of new programming services through the exercise of monopsony power or vertical foreclosure. Ownership interests that do not confer the right to purchase or select programming do not implicate this concern and therefore should not be treated as attributable. For example, a minority, non-controlling exemption from the attribution rules should presumptively apply to interests that restrict a minority shareholder's ability to vote independently from the rest of the shareholders of the same class; enter into voting trusts, groups, or pools; and acquire additional shares in the future. The determination of whether other non-

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[34/] For example, Cablevision's chairman, Charles F. Dolan, retains control of approximately 41.4 percent of the total voting power of the Common Stock, and Dolan family members hold an additional 35.4 percent of the total voting power of all classes of the Common Stock. *See* Cablevision Systems Corporation Form 424B1 at 12 (filed with Securities and Exchange Commission Dec. 14, 2001).

controlling, minority interests could qualify for this exemption could be made on a case-by-case basis, after analyzing the totality of facts surrounding an investment in order to ascertain whether the holder has acquired a meaningful degree of control or influence over programming decisions. Such an approach would help to ensure that the Commission's attribution rules do not unnecessarily thwart pro-competitive transactions that do not threaten the interests underlying the horizontal ownership rules.

III. THE COMMISSION SHOULD NOT ADOPT ANY PROPHYLACTIC RESTRICTIONS ON CABLE/DBS OWNERSHIP

Current market conditions do not warrant adoption or consideration of a structural rule limiting cable/DBS cross-ownership.[35/] While the national footprint of the two major DBS providers clearly restrains any potential exercise of market power by cable operators in local markets across the country, there is no basis presently for concern that cable operator acquisition of DBS assets or provision of MVPD service via DBS facilities would undermine that competitive constraint. Any competitive issues that might arise in connection with cable/DBS combinations can be addressed under the antitrust laws on a fact-specific basis.

Under some circumstances, cable operator participation in the DBS business can enhance competition in the overall MVPD marketplace by providing consumers with additional choices beyond those in place today. For example, Cablevision, through its programming affiliate Rainbow Media, is deploying capital and resources in order to offer programming over new DBS facilities in several major metropolitan markets in the

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[35/] *See Notice* ¶ 67.

eastern United States.[36/] Rainbow is on track with respect to the milestones related to the construction and deployment of the facilities that will be used to furnish its DBS offerings.[37/] The programming offered by Rainbow's DBS operation will provide both programmers and consumers with more choices and more outlets beyond the programming packages currently offered by cable operators and DBS providers.

There is nothing in the current marketplace to justify FCC imposition of a prophylactic limit on cable operator ownership of DBS facilities and assets. Any competitive issues that might arise in connection with a cable/DBS combination could be considered on a case-by-case basis. Moreover, the antitrust laws will continue to act as a backstop against any anti-competitive cable/DBS combinations. In any event, under no circumstances should the Commission impose restrictions on cable operator ownership of DBS assets in circumstances in which such a combination enhances the outlets and choices available to both programmers and consumers.

CONCLUSION

For the above reasons, the Commission should eliminate any limitations on carriage of affiliated programming by cable operators, should tailor its attribution rules to the goals of the ownership restriction, and should refrain from adopting limitations on cable/DBS ownership.

36/ *See In re Petition of R/L DBS Company, L.L.C. For Extension of its Direct Broadcast Satellite Construction Permit*, DA 00-2852 (rel. Dec. 29, 2000), ¶ 12.

37/ *See* Letter of R/L DBS Company, LLC, Direct Broadcast Satellite Construction Permit, File Nos. DBS 87-01, 94-SAT-AL-96, 94-SAT-TC-96, 49-SAT-TC-95, 130-SAT-EXT-95, to Donald Abelson, Chief, International Bureau (filed Dec. 21, 2001).

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CERTIFICATE OF SERVICE

I, Margo B. Adams, hereby certify that on this 4th day of January 2002, I caused copies of the foregoing "Comments of Cablevision Systems Corporation" to be sent to the following by hand delivery.

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